

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: RP CREATIONS LTD.

TTAB

MARK: NATALIE

SERIAL NO.: 76/656,180

FILED: March 7, 2006

EXAMINER: Ira Goodsaid, Trademark Examining Attorney, Law Office 101

**NOTICE OF APPEAL
AND
BRIEF OF APPLICANT**

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

NOTICE OF APPEAL

Applicant seeks registration of NATALIE for "Accessories for women, namely, barrettes, buttons, embroidery, hair clips, hat pins and ornamental novelty pins" and appeals the Section 2(d) refusal based on prior registration 3,020,769 of NATALIE & ME for "women's clothing."

The appeal fee of \$100 is remitted herewith.

APPEAL BRIEF

Although the marks of the parties as well as the goods identified by the marks are sufficiently different to obviate any likelihood of confusion, the examining attorney argues otherwise, and comes to this viewpoint mainly as a result of an EVIDENTIARY DECLARATION in which applicant made of record the below facts:

- "1. she is President of the applicant, RP CREATIONS LTD., a small business located in Long Beach, New York;

2. she personally performs all business functions for the applicant, without the assistance of any other individual, these functions being selling directly to applicant's retail store customers which then sell what is purchased to the public;
3. in declarant's personal direct relationships with retail store buyers, a reference to another individual, such as a reference to "& ME" would not be understood and, in fact, would likely cause confusion because there is no "ME" other than declarant using her name NATALIE;"

The examining attorney argues that "The applicant's self-serving affidavit averring that there would be no confusion is accorded little probative value" (underlining added) misunderstands the reason why the affidavit was filed and what is the point it was intended to serve.

The affidavit does not go to the issue or likelihood of confusion. Rather it goes to the examining attorney's self-serving contention that in the cited mark NATALIE & ME, that NATALIE would be associated with the given name in applicant's mark and *ergo* the given name is dominant over "& ME." See Examining Attorney's Office Action, page 1, last paragraph, at line 4.

In the record on appeal there is factual support that women's clothing tagged NATALIE & ME would not be mistaken by retail store buyers – applicant's customers – as emanating with applicant Natalie Ross because there is no "me" in addition to said Natalie Ross involved in the operation of the business of applicant.

Hypothesizing that in a retail store there is displayed to a patron an item of NATALIE & ME-identified clothing and a NATALIE-identified "barrette, buttons, etc.," applicant relies on product differentiation to obviate any likelihood of confusion, in conjunction with the differences in sound, meaning and appearance in the marks. The goods would not be commingled but would be displayed separately and differently (underlining added), the clothing vertically on hangers and the "barrettes, etc." in horizontal counter trays.

Applicant relies on TMEP 1207.01(a)(i) which, in pertinent part, provides:

“If the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely. (Citing *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156 (TTAB 1990), *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986).”

Applicant's position is that on the record, it has not been established that the respective goods are marketed in a way that they would be encountered in a situation that would create the incorrect assumption that they originate from the same source (underlining added).

For the foregoing reasons, favorable reconsideration of this application is respectfully requested.

Respectfully,

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